

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Stanley Odell Moss,

Debtor(s).

C/A No. 21-01722-HB

Chapter 7

**ORDER DENYING IMPOSITION OF
AUTOMATIC STAY PURSUANT TO
11 U.S.C. § 362(c)(4)(B)**

THIS MATTER came before the Court for a hearing on July 26, 2021, to consider the pleading filed by Debtor Stanley Odell Moss,¹ which the Court interpreted as a request to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B). That request followed entry of an *Order Confirming that No Automatic Stay is in Effect Pursuant to 11 U.S.C. § 362(c)(4)(ii)* on July 7, 2021 (“July 7 Order”). Present at the hearing were Moss, *pro se*, and John B. Kelchner, counsel for U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“U.S. Bank”). The trustee did not file a response nor appear at the hearing.

Moss is the owner of property located at 603 Greenleaf Drive, Anderson, SC 29626, which is his residence (“Property”). Although Moss’ schedules do not clearly indicate that U.S. Bank holds a debt secured by the Property, at the hearing he confirmed U.S. Bank holds a mortgage on the Property and he owes a debt to that creditor. Prior to May 2019, Moss became delinquent on his mortgage payments and U.S. Bank filed a foreclosure action regarding the Property in the Court of Common Pleas of Anderson County, South Carolina, bearing Case No. 2019-CP-04-00984 (“Foreclosure Action”). Thereafter, Moss filed actions against U.S. Bank and others in the district court, all of which were dismissed, and a series of bankruptcy cases, *pro se*, which have delayed completion of the Foreclosure Action and the sale of the Property.

¹ ECF No. 26, filed Jul. 8, 2021.

The first Chapter 13 case, Case No. 20-00865-hb, was filed on February 19, 2020, and dismissed on May 18, 2020, because Moss failed to pay the filing fee installment, file copies of payment advices, and attend the meeting of creditors. The second Chapter 13 case was filed on August 4, 2020, bearing Case No. 20-03140-hb, and dismissed on November 9, 2020, because Moss failed to attend the meeting of creditors. The third Chapter 13 case was filed on January 4, 2021, bearing Case No. 21-00016-hb. While that case was pending, U.S. Bank filed a motion for relief from stay pursuant to § 362(d). After a hearing, the Court entered an order pursuant to § 362(c)(4), declaring no stay was in effect and relief under § 362(d) was unnecessary. Moss requested a voluntary dismissal of that case and it was dismissed on April 26, 2021.

U.S. Bank again resumed its Foreclosure Action and obtained an Order and Judgment of Foreclosure and Sale entered May 28, 2021. The judgment is in the amount of \$79,425.91, with arrearages due as of November 1, 2018. A foreclosure sale was scheduled for July 6, 2021. Moss filed the above-captioned Chapter 7 case on June 29, 2021, and the first meeting of creditors pursuant to § 341 is scheduled for August 6, 2021. No stay was in effect as a matter of law pursuant to § 362(c)(4)(A), yet U.S. Bank canceled the foreclosure sale.

On June 30, 2021, U.S. Bank filed a *Motion for Confirmation that no Automatic Stay is in Effect Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii)* (“U.S. Bank’s Motion”), resulting in the July 7 Order. Even absent entry of the July 7 Order, no stay was in effect. The foreclosure sale was then rescheduled for August 3, 2021.

Moss filed a pleading titled *Debtor’s Objection to Movant’s Motion for Comfort Order Confirmation that No Automatic Stay is in Effect Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii)* (“Objection”). On July 12, 2021, the Court entered an Order in favor of U.S. Bank but, out of an abundance of caution, liberally interpreted the pleading as a request to *impose* the automatic stay

pursuant to § 362(c)(4)(B) and scheduled a hearing for July 26, 2021. U.S. Bank objected ² and Moss responded.³ At the hearing, Moss asserted his case was filed in good faith because he is able to repay his creditors, including U.S. Bank, through a payment plan and is aggressively searching for employment. He requested the Court impose the automatic stay in order for a repayment plan to be worked out. However, at this time he remains without steady income or the ability to make the mortgage payment or other payments. He stated that the impact of the COVID-19 pandemic and health issues contributed to his financial difficulties but, as indicated above, his mortgage delinquency began much earlier.

If there is no stay as a result of §362(c)(4)(A)(i), a debtor may request the stay take effect if such request is made within 30 days after the filing of the later case and if, after notice and a hearing, the debtor “demonstrates that the filing of the later case is in good faith . . .” 11 U.S.C. § 362(c)(4)(B). Section 362(c)(4)(D) states that “for purposes of subparagraph (B), a case is presumptively filed not in good faith . . .” This “presumption may be rebutted by clear and evidence to the contrary.” 11 U.S.C. § 362(c)(4)(D). “Clear and convincing evidence is a somewhat stringent standard, requiring a showing of proof ‘beyond preponderance,’ but below ‘beyond reasonable doubt.’” *In re Washington*, 443 B.R. 389, 394 (Bankr. D.S.C. 2011) (citations omitted).

Although good faith is not defined within § 362(c)(4)(D), this Court has determined good faith with respect to extensions of the automatic stay by adopting the totality of circumstances test. *See In re Thomas*, 352 B.R. 751, 756 (Bankr. D.S.C. 2006). The following factors are considered to determine whether a debtor’s subsequent filing was in good faith: “1) Debtor’s past bankruptcy filings, which includes a determination of whether Debtor experienced a change in circumstances

² ECF No. 29, filed Jul. 19, 2021.

³ ECF No. 30, filed Jul. 22, 2021.

warranting another filing; 2) the period of time that elapsed between Debtor's filings; 3) Debtor's pre-petition behavior; and 4) the effect of Debtor's repeated filings on creditors." *Id.* at 757 (quoting *In re Goodwin*, C/A No. 05-45110-jw, slip op. (Bankr. D.S.C. Dec. 19, 2005)). "The determination of good faith is necessarily fact intensive and must be conducted on a case-by-case basis." *Id.* "The Court should consider the totality of the circumstances . . . evidence of a substantial change in circumstances following previous filed cases, and any other relevant evidence offered by the debtor in making its decision. A change in circumstances, substantial or not, would rarely by itself demonstrate good faith of the current filing." *Id.*

Pro se litigants are often held to less stringent standards than lawyers. *In re Loy*, 448 B.R. 420, 437 (Bankr. E.D. Va. 2011). However, "the grant of leniency is not without its limitations." *Id.* "The Court must also consistently and fairly apply the Court's rules to all parties, whether they are *pro se* or represented by counsel." *In re McCain*, 353 B.R. 452, 465 (Bankr. E.D. Va. 2006).


Considering the record before the Court, the automatic stay should not be imposed under § 362(c)(4)(B). Moss has filed four bankruptcy cases over the past seventeen months, each with the direct effect of delaying the Foreclosure Action and sale of the Property. While Moss insists he intends to repay his creditors, he is unable to do so. His financial situation has not improved since filing or since the prior bankruptcy cases and he has insufficient income to address his debts or cure the substantial arrearage owed to U.S. Bank. Unlike Chapter 13, there is no obvious framework in a Chapter 7 case for a new repayment plan and the stay available to a Chapter 7 debtor is generally of limited duration, offering little protection for a debtor delinquent on mortgage payments. Given the high standard that must be met to impose the stay on these facts, Moss failed to demonstrate clear and convincing evidence that this case was filed in good faith for the Court to impose the stay under § 362(c)(4)(B).

IT IS, THEREFORE, ORDERED that Moss' request to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B) is denied and no automatic stay is in effect as a result of the above-captioned bankruptcy case.

**FILED BY THE COURT
07/27/2021**



Entered: 07/27/2021


Chief US Bankruptcy Judge
District of South Carolina